IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL LINDER, Plaintiff, v. GOLDEN GATE BRIDGE, HIGHWAY & TRANSPORTATION DISTRICT, a Special District; LISA LOCATI individually and as Bridge Captain of the District, and DOES 1 to 10, Defendants.	Case No. 14-CV-03861 SC ORDER GRANTING LEAVE TO FILE UNTIMELY OPPOSITION BRIEF AND GRANTING MOTION TO DISMISS

I. INTRODUCTION

Now before the Court are two intertwined motions in this case alleging constitutional, employment, and tort claims against Defendants the Golden Gate Bridge, Highway & Transportation District ("the District") and Bridge Captain Lisa Locati (collectively, "Defendants") stemming from the termination of Plaintiff Paul Linder's employment with the District. First, Defendants moved to dismiss Linder's complaint, ECF No. 1 ("Compl." or "Complaint") for failure to state a claim. ECF No. 9 ("MTD"). Plaintiff's counsel ("Counsel") missed the deadline to file an

opposition to that motion, ECF No. 19 ("Cert. of Non-Opp'n"), and as a result, moved for leave to file an untimely opposition brief, arguing that his neglect in missing the deadline was excusable. ECF No. 21 ("Timing Mot."). Pursuant to a Court-ordered briefing schedule, ECF No. 30, both motions are fully briefed,[1] and appropriate for resolution without oral argument under Civil Local Rule 7-1(b). For the reasons set forth below, leave to file the untimely opposition brief is GRANTED. Defendants' motion to dismiss is GRANTED.

II. BACKGROUND

Linder was employed by the District in various roles for 21 years. At the relevant times he served as a Bridge Lieutenant, and from 2004 to 2012 he was also the Assistant Rangemaster and (later) Rangemaster. As Assistant Rangemaster and Rangemaster, he was responsible for firearms training and certification for District employees. In January or February of 2012, for reasons not specified in the Complaint, Bridge Captain Locati removed Linder from the role of Rangemaster.

Several months later, Locati told Linder he would be interviewed by an outside investigator who was looking into complaints concerning the District's compliance with regulations governing weapons permitting and licensing. That interview and subsequent investigation by the California Bureau of Security and Investigative Services ("the Bureau") and California Department of Justice ("CDOJ") concluded that the District paid a retired former

[1] ECF Nos. 26 ("Timing Opp'n"); 31 ("Opp'n"); 32 ("Timing Reply"); 33 ("Reply").

employee to sign off on District firearms certifications without knowledge of whether the individuals in question were actually qualified for certification. Over the course of that investigation, Linder also revealed that Locati misrepresented the retired former employee's date of retirement to conceal that the District lacked an active Rangemaster (as is apparently required) from March 2003 until 2004. This and other information provided by Linder was the "central cause" of the Bureau's decision to revoke permits allowing the District to qualify and re-qualify its personnel to carry firearms. ECF No. 1 ("Compl.") at ¶ 23. As a result of the revocation of the District's permits, the District was required to use private range services to comply with firearm regulations.

The District sought to terminate Linder's employment on two occasions. First, on July 9, 2012, Linder was given a letter of intent to terminate his employment based on his submission of two allegedly incorrect dates on documents submitted to the Bureau. After that meeting, Linder was escorted from the premises and told not to return, and he continued on unpaid leave until September 2012, when his termination was overturned. His termination was overturned after his counsel submitted proof that Linder had, in fact, followed the District's policies and procedures in submitting documents to the Bureau. Nonetheless, his return was mired by incidents of allegedly retaliatory conduct by Locati, who assigned him to an unprecedented and undesirable schedule, excessively scrutinized his conduct, and placed unique conditions on his return. Linder filed a grievance complaining about this alleged conduct, however the District's human resources department rejected

the grievance and refused Linder's parallel request for an investigation of allegations of wrongdoing leveled by Locati.

Linder was finally terminated in February 2014. Several months prior to his actual termination, in October 2013, Linder reported a security issue to Locati. Two months later, Locati ordered Linder undergo a "fitness for duty"[2] examination. Despite being cleared to return to duty, Linder was placed on administrative leave, and in late December 2013, Locati "initiated an Intent to Terminate memorandum"[3] for Linder, citing various alleged instances of Linder's failure to perform certain job duties. On February 19, 2014, Linder was terminated. In terminating Linder, the District cited four issues: (1) an incident with an individual who attempted to climb a cable on the Golden Gate Bridge, (2) a written warning regarding a complaint from the California Highway Patrol about Linder's response to a car accident, (3) Linder's response to a potential suicide, and (4) Linder's allegedly aggressive behavior toward a trespassing jogger. Id. at ¶ 47.

Subsequently, Linder filed this suit alleging five claims against Locati and the District: (1) retaliation in violation of California Labor Code Section 1102.5(b), (2) violations of Linder's

[2] This term and other apparent terms of art like "Brady hearing," or "Bridge Lieutenant" are not always clearly defined either in the Complaint or the parties' briefs. Obviously the Court can surmise the meaning of some of these terms based on context (although the Court shares Defendants' confusion about the references to Brady, see Mot. at 16 n.2). However, in the future the parties should explain terms like these unless their meanings are truly clear from context or are well known.

[3] Again, this term is not defined. Given that this is a case about the termination of Linder's employment, the details of how employment decisions are made at the District are highly relevant and should be included in an amended complaint.

First, Fifth, and Fourteenth Amendment rights under 42 U.S.C. Section 1983, (3) violation of the Bane Act, California Civil Code Section 52.1, and (4) intentional infliction of emotional distress.

When the case was filed it was initially assigned to Magistrate Judge Westmore. While Linder consented to magistrate judge jurisdiction, ECF No. 7, Defendants did not file a consent or declination to magistrate judge jurisdiction until after filing their motion to dismiss. ECF No. 12 ("Notice"). As a result, the motion to dismiss was noticed before Judge Westmore with the opposition brief due on October 28, 2014. ECF No. 13. After the case was reassigned to the undersigned, notices were issued informing the parties that the hearing dates were vacated, and motions should be re-noticed before the undersigned. ECF Nos. 14-15. Nevertheless, as the order reassigning the case, ECF No. 15, stated, "[b]riefing schedules . . . remain[ed] unchanged." Id. at 1 (citing Civ. L.R. 7-7(d)). While the docket entry re-noticing the motion to dismiss stated the correct deadline, October 28, 2014, Counsel did not file a responsive brief on that day. Instead, on November 5, 2014, Defendants filed a certification of no opposition. Cert. of Non-Opp'n at 1-2. Realizing his mistake, Counsel filed a motion to retroactively extend the opposition deadline, arguing that his failure to respond on the appropriate date was due to the innocent miscalculation of deadlines based on the date of the renoticed motion, and the absence of an associate due to a death in the family. In Counsel's view, this explanation, coupled with other relevant facts, renders his neglect in failing to timely respond to Defendants' motion excusable. Defendants oppose the request for leave to file the untimely brief, and argue

the Complaint should be dismissed either for Counsel's failure to file a timely response or on the merits of the motion to dismiss.

III. LEGAL STANDARDS

A. Leave to File Untimely Brief

The Court has discretion to retroactively extend deadlines under Federal Rules of Civil Procedure 6(b) and 60(b)(1) provided that a party shows its neglect in missing the deadline was excusable. In determining whether the parties have shown excusable neglect, the Court considers four factors (the "Pioneer factors"): (1) the danger of prejudice to the nonmoving parties, (2) the length of delay, (3) the reason for the delay, and (4) whether the movant acted in good faith. See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993); Silber v. Mabon, 18 F.3d 1449, 1455 (9th Cir. 1994).

B. Rule 12(b)(6)

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the legal sufficiency of a claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the

elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). The allegations made in a complaint must be both "sufficiently detailed to give fair notice to the opposing party of the nature of the claim so that the party may effectively defend against it" and "sufficiently plausible" such that "it is not unfair to require the opposing party to be subjected to the expense of discovery." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

IV. DISCUSSION

Determining whether to grant Linder's counsel's request for an extension of the opposition deadline is a threshold question. In other words, if the Court finds that Linder's counsel's neglect in missing the applicable deadline was inexcusable, then dismissal may be appropriate. See Tabi v. Pasadena Area Cmty. Coll. Dist., 510 F. App'x 524, 525 (9th Cir. 2013). As a result, the Court addresses that issue first. Because the Court finds Counsel's neglect in missing the opposition deadline was excusable, the Court then turns to the merits of Defendants' motion to dismiss.

A. Motion for Enlargement of Time

Counsel points to two causes for the delay in filing an opposition brief: (1) confusion stemming from the reassignment of the case from Judge Westmore to the undersigned, and (2) the absence of an associate assigned to this case due to a death in the family. Coupling these explanations with the apparent lack of prejudice to Defendants, Counsel's undisputed good faith, and the short length of the delay at issue, Counsel argues his neglect in

failing to file a timely opposition is excusable.

Defendants disagree with several of these points, but dedicate a significant amount of their opposition to various procedural issues with the motion to extend time. Specifically, Defendants argue that because Counsel filed his motion under Civil Local Rule 7-2 (not Rule 6-3, which governs motions to change time), and did not submit a declaration setting forth the reasons for the enlargement of time, efforts to stipulate, harm or prejudice that will result, discloses previous time modifications, and describes the effects on the case management schedule as required Rule 6-3(a), the motion should be denied. True, the undersigned has previously denied motions for failure to comply with aspects of Local Rule 6-3, including the declaration requirement. See e.g., Wilson v. Frito-Lay N. Am., Inc., No. 12-1586 SC, 2015 WL 846546, at *2 (N.D. Cal. Feb. 25, 2015); McCreary v. Celera Corp., No. 11-1618 SC, 2011 WL 1399263, at *2 (N.D. Cal. Apr. 13, 2011). However, in each of those cases, the procedural deficiencies left the Court without sufficient facts to decide the motion. After all, that is the purpose of the declaration requirement in Civil Local Rule 6-3 -- ensuring the Court has sufficient facts to address the merits of requests to enlarge time. Here, unlike cases denying motions to change time for failing to comply with Local Rule 6-3, the Court finds that even if Counsel's motion is procedurally defective, it still provides sufficient facts to assess the merits of the motion. As a result, denying the motion for procedural deficiencies under these circumstances would elevate form over substance. Thus the Court will construe the motion as proper under the rules and consider the merits of Plaintiff's

request.

The Court finds that the Pioneer factors weigh in favor of granting leave to file the untimely opposition brief. First, while Defendants complain they were prejudiced by having to respond to Counsel's motion, and some (relatively minor) delay did occur in the period of uncertainty over how to proceed with briefing these motions, any prejudice here was insubstantial. On the contrary, granting leave to file an opposition brief under these circumstances would do little more than deny Defendants "a quick but unmerited victory, the loss of which we do not consider prejudicial." Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1262 (9th Cir. 2010). Second, while Defendants argue the length of delay was "unknown," the relevant period of delay is the eight days between the opposition deadline and Counsel's motion. This is a fairly minor delay. Cf. Bateman v. U.S. Postal Serv., 231 F.3d 1220, 1225 (9th Cir. 2000) (finding neglect was excusable despite a month delay). Third, while a calendaring mistake is a "weak justification for an attorney's delay," contrary to Defendants' assertions, Timing Opp'n at 5, even calendaring mistakes are compatible with findings of excusable neglect. See Ahanchian, 624 F.3d at 1262; see also Pincay v. Andrews, 389 F.3d 853, 860 (9th Cir. 2004) (finding excusable neglect despite the failure to correctly apply a clear local rule); Bateman, 231 F.3d at 1225 (concluding the excusable neglect standard was satisfied despite a month-long delay during which an attorney was recovering from jet lag and reviewing mail). Finally, Counsel's good faith is undisputed.

As a result, the Court finds that Counsel's neglect in failing

to file a timely opposition was excusable. Therefore, the motion for leave to file the untimely opposition to Defendants' motion to dismiss is GRANTED. In the future, however, Counsel is advised to carefully review and follow the Local Rules, as the Court may strike portions of future filings that fail to comply or impose other appropriate sanctions.

B. Motion to Dismiss

Linder alleges four types of claims: (1) First, Fifth, and Fourteenth Amendment claims under 42 U.S.C. Section 1983, (2) whistleblower retaliation contrary to California Labor Code Section 1102.5(b), (3) violation of the Bane Act, California Civil Code Section 52.1, and (4) intentional infliction of emotional distress. The Court will address each of these claims in turn.

1. Section 1983 Claims

To state a claim under Section 1983, Linder must show that "an individual acting under the color of state law deprived him of a right, privilege, or immunity protected by the United States Constitution or federal law." Levine v. City of Alameda, 525 F.3d 903, 905 (9th Cir. 2008) (citing Lopez v. Dep't of Health Servs., 939 F.2d 881, 883 (9th Cir. 1991). Linder alleges that both Locati and the District, acting under color of state law, deprived him of his Fifth and Fourteenth Amendment due process rights and his First Amendment free speech rights. As Defendants point out, the Fifth Amendment claims are meritless, because the Fifth Amendment applies only to federal actors, not state or local government actors like Locati or the District. See Lee v. City of L.A., 250 F.3d 668, 687 (9th Cir. 2001). Accordingly, to the extent Linder alleges Fifth Amendment claims against Locati or the District, such claims are

DISMISSED. Further, because amendment would be futile as to those claims, the dismissal is WITH PREJUDICE.

Linder's claims under the Due Process Clause of the Fourteenth Amendment merit more attention. Due process claims are analyzed in two steps. See Walls v. Cent. Contra Costa Transit Auth., 653 F.3d 963, 967-68 (9th Cir. 2011). First, the Court must determine whether Linder had a property interest in continued employment. See id. at 968. Second, and only if the Court determines that Linder did, in fact, have a "property interest" in continued employment does the Court determine whether Linder received all the process he was due. See id. State law defines the property interests subject to federal due process protections. See Brady v. Gebbie, 859 F.2d 1543, 1547-48 (9th Cir. 1988).

Linder has not adequately alleged a property interest in continued employment. Under California law, public employees that are employed at-will do not have property interests in continued employment. See Binkley v. Long Beach, 16 Cal. App. 4th 1795, 1808 (Cal. Ct. App. 1993); see also Kaye v. Bd. of Trs. of the San Diego Cnty. Law Library, No. 07-cv-921 WQH (WMc), 2008 U.S. Dist. LEXIS 45604, at *12 (S.D. Cal. June 10, 2008). As Defendants point out, the District's enabling legislation provides for "employ[ment] and discharge at pleasure [of] all subordinate officers, employees and assistants." Cal. Sts. & Hwy. Code § 27151. The phrase "at pleasure" "means one is an at-will employee who can be fired without cause." Hill v. City of Long Beach, 33 Cal. App. 4th 1684, 1694 (Cal. Ct. App. 1996) (citing Bogacki v. Bd. of Supervisors, 5 Cal. 3d 771, 783 (Cal. 1971)). As a result, unless Linder can allege facts that, contrary to this statutory language, he is not

an employee at will, he cannot state a claim for violations of due process in terminating his employment under Section 1983.

Linder's rejoinders -- (1) that the District should be judicially estopped from arguing he is an employee at will based on another case in this district, Alarid v. Golden Gate Bridge Highway & Transportation District, No. 3:08-cv-2845-WHA (N.D. Cal.) Dkt. Nos. 48, 58, at 21:21-22, and (2) human resources policies provide for termination only for cause -- are either misguided or have not been pleaded. As Defendants point out, Alarid does not support Linder's judicial estoppel argument because it involved allegations by a bridge patrol officer, a unionized District employee with additional protections and process that Linder, as a non-unionized bridge lieutenant, was not entitled to.[4] Thus, Linder cannot show that the District has taken inconsistent positions in these two cases, an essential element for invoking judicial estoppel. See Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 782 (9th Cir. 2001). Finally, in Linder's opposition brief (not his Complaint), he argues that a memorandum of understanding between the District and a union and human resources policies contradict the statute, and provide for termination only for cause. While this argument may be meritorious, it is not pleaded in Linder's Complaint, and thus the Court need not address it. See Bruton v. Gerber Prods. Co., 961 F. Supp. 2d 1062, 1078 (N.D. Cal. 2013) ("[I]n determining the propriety of a Rule 12(b)(6) dismissal, a court may not look

[4] Defendants filed a request for judicial notice, ECF No. 34, attaching a declaration filed in Alarid and an unpublished California Superior Court decision. Because these documents are "not subject to reasonable dispute," and "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned," Federal Rule of Evidence 201(b), the request is GRANTED and the Court takes judicial notice of these documents.

beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition to a motion to dismiss."); see also McGraw v. City of Huntington Beach, 882 F.2d 384, 389 (9th Cir. 1989) (citing Skelly v. State Personnel Bd., 15 Cal. 3d 194, 207 (1975)) (concluding that under California law, "a public employee . . . who can establish the existence of rules and understandings, promulgated and fostered by state officials, that justify her legitimate claim to continued employment absent sufficient cause, has a property interest in such continued employment within the purview of the due process clause.").

Accordingly, Linder's Fourteenth Amendment claims are DISMISSED. The dismissal is WITHOUT PREJUDICE, and leave to amend is GRANTED to cure the deficiencies set forth above.

Next, Linder alleges that his termination violated his First Amendment rights. "It is well settled that the state may not abuse its position as employer to stifle 'the First Amendment rights its employees would otherwise enjoy as citizens to comment on matters of public interest.'" Dahlia v. Rodriguez, 735 F.3d 1060, 1066 (9th Cir. 2013) (quoting Eng v. Cooley, 552 F.3d 1062, 1070 (9th Cir. 2009)) (internal alteration omitted). In First Amendment cases involving public employees, the Court must seek "a balance between the interests of the [employee], as a citizen, in commenting on matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Pickering v. Bd. of Educ., 391 U.S. 563, 568 (1968). This balancing test has been refined into five steps querying:

> (1) whether the plaintiff spoke on a matter of

> public concern; (2) whether the plaintiff spoke as a private citizen or public employee; (3) whether the plaintiff's protected speech was a substantial or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently from other members of the general public; and (5) whether the state would have taken the adverse employment action even absent the protected speech.

Eng, 552 F.3d at 1070. Failure to meet any one of these steps is fatal to a plaintiff's case. See Dahlia, 735 F.3d at 1067 n.4.

Defendants do not focus on whether Linder has satisfied these criteria, instead arguing that because they did not intend to inhibit Linder's free speech, his claims must be dismissed. See Mendocino Envt'l Ctr. v. Mendocino Cnty., 192 F.3d 1283, 1300 (9th Cir. 1999). More concretely, Defendants point to Linder's allegations that Locati and the District directed him to speak with investigators as evidence that they lacked intent to chill Linder's speech.

Linder, for his part, does not respond to this argument, instead largely addressing arguments that Defendants did not press in their opening brief, and as a result, the Court need not address the issue. See Stichting Pensioenfonds ABP v. Countrywide Fin. Corp., 802 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011) (quotation omitted)("[I]n most circumstances, failure to respond in an opposition brief to an argument put forward in an opening brief constitutes waiver or abandonment in regard to the uncontested issue."). At best, Linder's only response to Defendants' argument is (citing the wrong paragraphs of his Complaint) that the Complaint pleads "Defendant [sic] has taken the aforementioned actions against Plaintiff in direct retaliation for, and in response to, the various protected activities of Plaintiff and the

prospect of Plaintiff engaging in such activities." Compl. ¶ 68. This allegation is conclusory and unsupported by any facts pleaded in the Complaint. Accordingly, the Court gives this allegation no weight. See Iqbal, 556 U.S. at 679.

As a result, Linder's First Amendment retaliation claims are also DISMISSED. Leave to amend is GRANTED to cure the deficiencies identified above.

Defendants also contend that Linder failed to sufficiently allege the District's liability under Section 1983. There is no respondeat superior liability for municipalities or local government agencies under Section 1983. See Monell v. Dep't Soc. Servs. of N.Y., 436 U.S. 658, 691 (1978). Instead, a plaintiff seeking to hold a municipality or local government entity liable for its employees' acts must allege "Monell liability," which "attach[es] when an employee is acting pursuant to an expressly adopted official policy, longstanding practice or custom, or as a final policymaker." Thomas v. Cnty. of Riverside, 763 F.3d 1167, 1170 (9th Cir. 2014).

Linder's exact theory of Monell liability is unclear. While Defendants believe Linder intends to proceed on an improper policy theory, Reply at 7, his Complaint seemingly alleges that Monell liability is proper under either an improper policy or final policymaker theory (with Locati as the final policymaker). See Compl. ¶¶ 10, 68-69. Nevertheless, Linder's claims are inadequately pleaded under either theory. First, Linder does not allege even the existence of an official policy of retaliation against whistleblowers, thus he cannot proceed on a policy theory. See Dugan v. Cnty of Los Angeles, No. 2:11-cv-08145-ODW (SHx), 2012

WL 1161638, at *4-5 (C.D. Cal. Apr. 9, 2012) (dismissing a Monell policy claim for failure to allege any facts supporting the existence of the asserted policy); see also AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d 631, 636-38 (9th Cir. 2012). Similarly, Linder makes nothing more than conclusory allegations that Locati was a final policymaker or that a final policymaker ratified her actions. See Turner v. City & Cnty. of San Francisco, 892 F. Supp. 2d 1188, 1214 (N.D. Cal. 2012). On the contrary, as Defendants point out, California law (which is controlling on the question of whether Locati is a final policymaker) seemingly provides that the District's general manager, not Locati, the Bridge Captain, is the final policymaker. See Cal. Sts. & Hwy. Code § 27151.

As a result, Defendants' motion to dismiss Linder's claims under Section 1983 is GRANTED. The dismissal is WITHOUT PREJUDICE, and leave to amend is GRANTED to cure the deficiencies set forth above.

2. Labor Code Section 1102.5(b)

California Labor Code Section 1102.5(b) states that "[a]n employer . . . shall not retaliate against an employee for disclosing information . . . to a government or law enforcement agency . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation." To state a claim under this section, Linder must show (1) that he was terminated after reporting a violation of or noncompliance with state or federal law, and (2) a causal connection between the termination and reporting the violation.

Edgerly v. City of Oakland, 211 Cal. App. 4th 1191, 1199 (Cal. Ct. App. 2012).

As Defendants point out, Linder does not identified any federal or state law, rule, or regulation that the District violated in the Complaint. This is insufficient. See Dauth v. Convenience Retailers, LLC, 2013 WL 5340396, at *2 (N.D. Cal. Sept. 24, 2013) ("Plaintiff must identify some federal or state law, rule, regulation that was either violated or that Defendants failed to comply with."). As a result, Defendants' motion to dismiss these claims is GRANTED WITHOUT PREJUDICE. Leave to amend is GRANTED to plead the alleged violations set forth in Plaintiff's opposition brief or others.

3. Bane Act and Intentional Infliction of Emotional Distress

Finally, Defendants move to dismiss Plaintiff's allegations under the Bane Act, California Civil Code Section 52.1, and for intentional infliction of emotional distress. In his opposition, Plaintiff offers to eliminate these claims from his amended complaint to narrow the issues for trial. As a result, the allegations are DISMISSED.

V. CONCLUSION

For the reasons set forth above, Plaintiff's motion to extend the deadline for filing an opposition brief is GRANTED. Defendants' motion to dismiss is GRANTED, and the Complaint is DISMISSED WITHOUT PREJUDICE. Leave to amend is GRANTED to cure the deficiencies set forth in this order. Plaintiff may file an amended complaint within thirty (30) days. Failure to file an

amended complaint within the time allotted may result in dismissal with prejudice.

IT IS SO ORDERED.

Dated: April 17, 2015

UNITED STATES DISTRICT JUDGE